

RESOLUTION NO. OB-13-27

A RESOLUTION OF THE OVERSIGHT BOARD OF THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY (I) APPROVING A PURCHASE AND SALE AGREEMENT BY AND BETWEEN THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY AND SADBERRY-PALM AVENUE LLC FOR THE SALE OF LAND FOR THE DEVELOPMENT OF THE 9TH & PALM AVENUE RETAIL/COMMERCIAL SPACE DEVELOPMENT PROJECT LOCATED AT 735-849 PALM AVENUE (APN 626-250-03, 04, 05 & 06), AND (II) APPROVING OTHER RELATED ACTIONS

WHEREAS, the Imperial Beach Redevelopment Agency (the "Redevelopment Agency") was a redevelopment agency in the City of Imperial Beach (the "City"), duly created pursuant to the California Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the California Health and Safety Code) (the "Redevelopment Law"); and

WHEREAS, Assembly Bill No. X1 26 (2011-2012 1st Ex. Sess.) ("AB 26") was signed by the Governor of California on June 28, 2011, making certain changes to the Redevelopment Law and to the California Health and Safety Code ("H&S Code"), including adding Part 1.8 (commencing with Section 34161) ("Part 1.8") and Part 1.85 (commencing with Section 34170) ("Part 1.85") to Division 24 of the H&S Code; and

WHEREAS, pursuant to AB 26, as modified by the California Supreme Court on December 29, 2011 by its decision in *California Redevelopment Association v. Matosantos*, all California redevelopment agencies, including the Redevelopment Agency, were dissolved on February 1, 2012, and successor agencies were designated and vested with the responsibility of paying, performing and enforcing the enforceable obligations of the former redevelopment agencies and expeditiously winding down the business and fiscal affairs of the former redevelopment agencies; and

WHEREAS, the City Council of the City adopted Resolution No. 2012-7136 on January 5, 2012, pursuant to Part 1.85 of AB 26, electing for the City to serve as the successor agency to the Redevelopment Agency upon the dissolution of the Redevelopment Agency under AB 26 (the "Successor Agency"); and

WHEREAS, on February 15, 2012, the Board of Directors of the Successor Agency, adopted Resolution No. SA-12-01 naming itself the "Imperial Beach Redevelopment Agency Successor Agency," the sole name by which it will exercise its powers and fulfill its duties pursuant to Part 1.85 of AB 26, and establishing itself as a separate legal entity with rules and regulations that will apply to the governance and operations of the Successor Agency; and

WHEREAS, H&S Code Section 34179 of AB 26 establishes a seven (7) member local entity with respect to each successor agency with fiduciary responsibilities to holders of enforceable obligations and taxing entities that benefit from distributions of property taxes, and such entity is titled the "oversight board." The oversight board has been established for the Successor Agency (hereinafter referred to as the "Oversight Board") and all seven (7) members have been appointed to the Oversight Board pursuant to H&S Code Section 34179. The duties and responsibilities of the Oversight Board are primarily set forth in H&S Code Sections 34179 through 34181 of AB 26; and

WHEREAS, as part of the FY 2012-2013 State budget package, on June 27, 2012, the Legislature passed and the Governor signed Assembly Bill No. 1484 ("AB 1484", Chapter 26,

Statutes 2012). On September 29, 2012, the Legislature passed and the Governor signed Assembly Bill No. 1585 ("AB 1585"), which further amended certain provisions of AB 26 as amended by AB 1484 (AB 26, AB 1484, and AB 1585 are collectively referred to herein as the "Dissolution Act"); and

WHEREAS, on February 6, 1996, the City Council of the City adopted Ordinance No. 96-901 approving and adopting a Redevelopment Plan for the Palm Avenue/Commercial Redevelopment Project. On July 18, 2001, the City Council of the City adopted Resolution No. 2001-5477 and the Redevelopment Agency adopted Resolution No. R-01-36 approving Amendment 1 to the Redevelopment Plan for the Palm Avenue/Commercial Redevelopment Project (the "Project Area"), which actions expanded the original redevelopment project area boundaries adopted and established on February 7, 1996 to effectively include the entire developable area of the City (the original Redevelopment Plan and the Amendment No. 1 to the Redevelopment Plan are referred to collectively as the "Redevelopment Plan"); and

WHEREAS, the Redevelopment Agency adopted its Five-Year Implementation Plan for the Project Area, as amended from time to time (the "Implementation Plan"), which established goals to support affordable housing, economic development, community revitalization, commercial revitalization, and institutional revitalization; and

WHEREAS, pursuant to H&S Code Section 34191.5(b) of the Dissolution Act, once the California Department of Finance ("DOF") issues a Finding of Completion to the Successor Agency, the Successor Agency shall prepare a Long Range Property Management Plan ("LRPMP") that addresses the disposition and use of certain real properties of the former Redevelopment Agency. The LRPMP shall be submitted to the Oversight Board and the DOF for approval no later than 6 months following the issuance of the Finding of Completion to the Successor Agency; and

WHEREAS, on April 12, 2013, the Successor Agency received its Finding of Completion; and

WHEREAS, the Successor Agency owns all right, title, and interest in and to certain real property (the "Palm Ave. Properties") formerly owned by the Redevelopment Agency, identified as 741-849 Palm Avenue and 735 Palm Avenue (collectively, 735-849 Palm Avenue), referenced by APN: 626-250-03, 04, 05, & 06, and generally located at the south side of Palm Avenue (State Route 75), between 7th Street and 9th Street within the Project Area; and

WHEREAS, the Successor Agency and Sudberry-Palm Avenue LLC, a California limited liability company (the "Purchaser") have negotiated a proposed Purchase and Sale Agreement, as the same may be amended, supplemented or modified from time to time in accordance with the terms thereof (the "Purchase Agreement"). The Purchase Agreement pertains to the sale to and development by the Purchaser of the Palm Ave. Properties and additional land (certain City public rights-of-way) to be vacated by the City, comprising in total of approximately 4.75 acres (collectively defined in the Purchase Agreement as the "Site"); and

WHEREAS, at this same meeting of the Oversight Board but after the Oversight Board's consideration of the proposed Purchase Agreement, the Oversight Board will consider for approval the Successor Agency's Amended LRPMP whereby the Successor Agency proposes, among other things, to sell the two Palm Ave. Properties directly to the Purchaser pursuant to the Purchase Agreement in accordance with H&S Code Section 34191.5(c)(2) of the Dissolution

Act. The Amended LRPMP will thereafter be submitted to the DOF for review concurrently with the proposed Purchase Agreement; and

WHEREAS, the “Effective Date” of the Purchase Agreement shall mean the date upon which all of the following conditions have been satisfied: (i) the approval of the Purchase Agreement by the Successor Agency and its Oversight Board; (ii) the approval of the Amended LRPMP by the Successor Agency and its Oversight Board pursuant to the Dissolution Act; (iii) the approval of the Amended LRPMP by the DOF pursuant to the Dissolution Act; (iv) the effectiveness of the Purchase Agreement pursuant to the Dissolution Act, or the review and approval of the Purchase Agreement by the DOF if the DOF timely and properly requests to review the Oversight Board’s action approving the Purchase Agreement in accordance with the Dissolution Act; and (v) the execution of the Purchase Agreement by both the Successor Agency and Purchaser; and

WHEREAS, the Purchase Agreement concerns the sale of the Site and the Purchaser’s associated development of the “Project”, defined and described in detail in the Purchase Agreement and summarized as follows: (i) a “town center” of new construction combining retail with commercial space in a pedestrian-friendly environment, consisting of approximately 46,200 square feet of building area in seven (7) buildings (designated in the Purchase Agreement as Parcels “A” through “G”), surface parking consisting of approximately 238 parking stalls, landscaping, hardscaping, lighting, driveways, and related improvements (collectively defined in the DDA as the “Private Improvements”), and (ii) certain off- Site public improvements, including without limitation intersection improvements at Delaware Avenue, Palm Avenue and State Route 75 and all associated improvements, curb, gutter, landscaping, traffic signal, alley and undergrounding improvements required for the Project, and any other Cal-Trans requirements (collectively defined in the DDA as the “Public Improvements”). The Purchase Agreement further contemplates the City’s ownership of the Public Improvements to be constructed on and off the Site pursuant to the Purchase Agreement; and

WHEREAS, in accordance with the appraised value of the Site as set forth in the appraisal dated September 10, 2013, and pursuant to Section 201 of the Purchase Agreement, the “Purchase Price” (the monetary consideration payable to the Successor Agency by the Purchaser) for the Site includes the following two components: (a) the payment of the sum of \$213,000, in cash, at the Close of Escrow; and (b) the payment of the “Participation Component” in accordance with the proposed Payment Agreement attached to the Purchase Agreement, equal to 1.5% of the gross sales price from the first arm’s-length sale of each parcel or parcels of the Site (or any portion thereof) by the Purchaser in any number of transactions which is completed within the first 55-years from the Effective Date of the Purchase Agreement, if any; and

WHEREAS, the sale proceeds of \$213,000 cash to be received by the Successor Agency from the sale of the Site to the Purchaser pursuant to the Purchase Agreement will be remitted after the close of escrow to the San Diego County Auditor-Controller’s Office for distribution to the taxing entities in accordance with H&S Code Section 34191.5(c)(2)(B) of the Dissolution Act. In addition, any funds received by the Successor Agency pursuant to the Participation Component of the Purchase Price (described above), pursuant to a qualifying sale in accordance with the proposed Payment Agreement, would likewise be remitted to the San Diego County Auditor-Controller’s Office for distribution to the taxing entities in accordance with H&S Code Section 34191.5(c)(2)(B) of the Dissolution Act; and

WHEREAS, the Successor Agency desires to enter into the Purchase Agreement with the Purchaser for the purpose of and related to the development of the Project on the Site and the construction of the Public Improvements; and

WHEREAS, pursuant to California Government Code Section 65402, the acquisition and disposition of the Site for the purposes and uses proposed by the Purchaser as outlined and provided for in the Purchase Agreement conform in every respect with the adopted General Plan and Local Coastal Program of the City as reported to and confirmed by the City Council of the City by adoption of Resolution No. 2011-7131, approved and adopted on December 14, 2011; and

WHEREAS, a public hearing was duly called, noticed and advertised as required by law for the City's and the Successor Agency's consideration of the proposed Purchase Agreement, as contemplated by the Redevelopment Law. On October 2, 2013, the City and the Successor Agency approved the proposed Purchase Agreement; and

WHEREAS, the sale of the Site and the construction of the Public Improvements will assist in the elimination of blight, and the development of the Site in accordance with the Purchase Agreement is consistent with the goals and objectives of the Implementation Plan; and

WHEREAS, a Mitigated Negative Declaration ("MND") was prepared for the Project, routed for public review and submitted to the State Clearinghouse (SCH #2011111018) for agency review pursuant to the provisions of the California Environmental Quality Act ("CEQA"). The City Council of the City approved and certified the information contained in the Final MND for the Project on December 14, 2011, which included mitigation measures that will avoid or reduce all potentially significant environmental effects to below a level of significance. This activity has been determined to be adequately addressed in the Final MND for the Project, and there is no substantial change in circumstances, new information of substantial importance, or project changes which would warrant additional environmental review; therefore, no further environmental review is required under the CEQA pursuant to State CEQA Guidelines Section 15162; and

WHEREAS, all other legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, BE IT RESOLVED by the Oversight Board of the Imperial Beach Redevelopment Agency Successor Agency, as follows:

- Section 1.** The Oversight Board hereby determines that the foregoing recitals are true and correct and are a substantive part of this Resolution.
- Section 2.** The Oversight Board hereby approves the proposed Purchase Agreement between the Successor Agency and the Purchaser and all of the terms and provisions of the Purchase Agreement including, without limitation, the sale of the Site to the Purchaser for the Purchase Price for development of the Project, and the construction of the Public Improvements in accordance with the Purchase Agreement.
- Section 3.** The Oversight Board hereby authorizes and directs the Executive Director, or designee, of the Successor Agency to execute the Purchase

Agreement and all documents, instruments, and agreements required by and for the implementation of the Purchase Agreement including, without limitation, all Attachments to the Purchase Agreement on behalf of the Successor Agency, subject to the approval as to form by the Executive Director of the Successor Agency and its legal counsel.

- Section 4.** The Oversight Board hereby authorizes and directs the Executive Director, or designee, of the Successor Agency (i) to make such amendments, changes or revisions to the Purchase Agreement or to any document, instrument, or agreement required by and for the implementation of the Purchase Agreement on behalf of the Successor Agency, as approved by the Executive Director of the Successor Agency and its legal counsel, (ii) to execute such other documents and take such other actions as are necessary or desirable and appropriate to carry out and implement the purposes of the Purchase Agreement and to effectuate the intent of this Resolution on behalf of the Successor Agency and the Oversight Board including, without limitation, approving extensions of deadlines set forth in the Purchase Agreement and the Schedule of Performance (Attachment No. 5 to the Purchase Agreement), and approving implementation agreements, as determined necessary by the Executive Director, or designee, to effectuate the purposes of the Purchase Agreement, and (iii) to administer the Successor Agency's obligations, responsibilities and duties to be performed under the Purchase Agreement and all documents, instruments, and agreements required by and for the implementation of the Purchase Agreement on behalf of the Successor Agency.
- Section 5.** The Successor Agency hereby authorizes and directs the Executive Director, or designee, of the Successor Agency to remit to the San Diego County Auditor-Controller's Office for distribution to the taxing entities in accordance with H&S Code Section 34191.5(c)(2)(B) of the Dissolution Act the proceeds of the Purchase Price that are received by the Successor Agency from the Successor Agency's sale of the Site to the Purchaser pursuant to the Purchase Agreement including (i) the cash in the amount of \$213,000 to be received by the Successor Agency at the Close of Escrow and (ii) any funds received by the Successor Agency pursuant to the Participation Component of the Purchase Price, pursuant to a qualifying sale in accordance with the proposed Payment Agreement.
- Section 6.** If any provision of this Resolution or the application of any such provision to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution that can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The Oversight Board declares that its Board would have adopted this Resolution irrespective of the invalidity of any particular portion of this Resolution.
- Section 7.** The adoption of this Resolution is not intended to and shall not constitute a waiver of any constitutional, legal or equitable rights that the Successor Agency may have to challenge, through any administrative or judicial

proceedings, the effectiveness and/or legality of all or any portion of the Dissolution Act, any determinations rendered or actions or omissions to act by any public agency or government entity or division in the implementation of the Dissolution Act, and any and all related legal and factual issues, and the Successor Agency expressly reserved any and all rights, privileges, and defenses available under law and equity.

Section 8. The Oversight Board hereby determines that a Mitigated Negative Declaration (MND) was prepared for the Project, routed for public review and submitted to the State Clearinghouse (SCH #2011111018) for agency review pursuant to the provisions of the California Environmental Quality Act ("CEQA"). The City Council of the City approved and certified the information contained in the Final MND for the Project on December 14, 2011, which included mitigation measures that will avoid or reduce all potentially significant environmental effects to below a level of significance. This activity has been determined to be adequately addressed in the Final MND for the Project, and there is no substantial change in circumstances, new information of substantial importance, or project changes which would warrant additional environmental review; therefore, no further environmental review is required under the CEQA pursuant to State CEQA Guidelines Section 15162.

Section 9. This Resolution shall take effect upon the date of its adoption and is subject to review by the DOF in accordance with H&S Code Section 34179(h) of the Dissolution Act.

PASSED, APPROVED, AND ADOPTED by the Oversight Board of the Imperial Beach Redevelopment Agency Successor Agency at its meeting held on the 9th day of October 2013, by the following vote:

AYES:	BOARD MEMBERS:	YANDA, WEST, SAADAT, FERNANDEZ,
		WINTER, HENTSCHE, FOLTZ
NOES:	BOARD MEMBERS:	NONE
ABSENT:	BOARD MEMBERS:	NONE

/s/
MAYDA C. WINTER
CHAIRPERSON

ATTEST:

/s/
JACQUELINE M. HALD, MMC
SECRETARY